

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

77-5035

ORIGINAL
WITH PROOF
OF SERVICE

To be argued by
HAROLD S. BERZOW

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

In the Matter

-of-

ADELPHI HOSPITAL CORPORATION,

Bankrupt.

NEW YORK STATE DEPARTMENT OF HEALTH,

Appellant,

LAWRENCE SARF, TRUSTEE IN BANKRUPTCY
OF ADELPHI HOSPITAL CORPORATION,

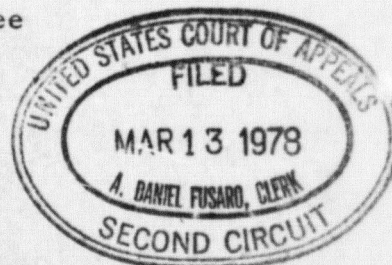
Appellee.

ON APPEAL FROM AN ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR APPELLEE, LAWRENCE SARF, TRUSTEE IN
BANKRUPTCY OF ADELPHI HOSPITAL CORPORATION

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(7049)

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No. 77-5035

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BRIEF FOR APPELLEE, LAWRENCE SARF,
TRUSTEE IN BANKRUPTCY OF ADELPHI
HOSPITAL CORPORATION

ARGUMENT

THE ORDER OF THE DISTRICT COURT, AFFIRMING THE ORDER
OF THE BANKRUPTCY COURT, SHOULD BE AFFIRMED IN ALL
RESPECTS IN VIEW OF THE FACT THAT THE PRESERVATION
AND MAINTENANCE OF THE BANKRUPT'S PATIENT RECORDS
CONSTITUTE A BURDEN TO THE ESTATE AND THE TRUSTEE
IN BANKRUPTCY IS NOT A PROPER PARTY TO BE CHARGED
WITH THE OBLIGATION OF PRESERVATION OR MAINTENANCE
OF SAID RECORDS

This case comes to this court from an appeal taken by
the NEW YORK STATE DEPARTMENT OF HEALTH from an order of Judge
George C. Pratt of the Eastern District of New York dated
October 19, 1977. which order affirmed the order of Bankruptcy
Judge Joseph V. Costa entered May 14, 1976.

Both the Bankruptcy Court and the District Court on appeal, held, inter alia, that the costs for preservation and maintenance of the bankrupt's patient records constituted a burden to the bankrupt estate and that the trustee in bankruptcy was not a party to be charged with the obligation of preserving and maintaining the patient records. We shall conclusively demonstrate herein that the order appealed from should be affirmed in all respects.

Article I, Section 8, Clause 4 of the United States Constitution, expressly delegates the power of Congress to establish uniform laws to administer bankrupts' estates. When the property of a bankrupt has come into the custody of a Bankruptcy Court, no other court has jurisdiction to take over and administer it without the consent of the Bankruptcy Court.

Stanoline Oil & Gas Company v. Logan, 92 F. 2d 28 (C.C.A. 5th Cir.), cert. den., 302 U.S. 763.

As a necessary corollary to the power to administer the bankrupt's property pursuant to Section 2(a) (7) and (21) of the Bankruptcy Act (11 U.S.C. Section 11(a)(7)(21)), the Bankruptcy Court has the power to refuse to administer burdensome property. The power of the trustee to abandon property is discussed in Collier's on Bankruptcy 14th Ed. Vol. 4A, Sec. 70.42, p. 502 where there is this statement:

"The paramount purpose of bankruptcy liquidation is the reduction of a bankrupt's property to money as expeditiously as practicable, so as to secure funds for distribution to general creditors. Hence the trustee in examining the various assets with regard to their potential value when converted into money for distribution to creditors is from the outset faced with the managerial duty to concentrate on property of possible benefit to the estate and to eliminate property that will be either valueless or unprofitable in administration. . . . the trustee may abandon any property which is either worthless or overburdened or for any other reason certain not to yield any benefit to the general estate."

The law is in fact, settled that it is the trustee's duty to abandon unprofitable property. American File Co. v. Garrett, 110 U.S. 288, Matter of Harper, 175 F. 412.

We submit that the Bankruptcy Law envisions the administration of a bankrupt's estate under the direction of the Bankruptcy Court with the prime and principal purpose of liquidating and disposing of the bankrupt's property in such a manner as will realize the greatest pecuniary benefit for creditors and as a necessary incident to such purpose is the trustee's obligation to minimize wherever possible, the costs and expenses of administering the bankrupt estate.

In the instant appeal, the Court is faced with an administration regulation of the New York State Health Code, Sec. 720.20(q), (10 NYCRR Sec. 720.20(q)) which states:

"In the event that a hospital discontinues operation for any reason whatsoever, the governing authority shall maintain, store and service in the city in which the hospital is located, all medical records for a period of not less than six years. The governing authority shall notify the department in writing where the medical records will be stored and serviced. . . "

Furthermore, Subsection "1" of the above regulation requires maintenance of the records for at least six years after an infant attains majority. Since ADELPHI HOSPITAL was a full service hospital, having an obstetric department, infants were both born and treated at the hospital in the years immediately preceding its closing.

The State Hospital Code regulations therefore would require that records of infant patients must be maintained in some instances for at least 24 years.

The preservation of the records alone is insufficient under the State Health Code regulations. The regulations require the servicing of said records as well. Servicing of these records would necessarily require the employment of a medical librarian, and an incidental clerical staff, as well as a lease for premises where these personnel could carry out their work.

We are dealing with more than a mere storage charge for records in this case. We are dealing with the costs of leasing the premises, hiring personnel, incurring insurance charges,

maintenance of records, bookkeeping services, payroll taxes and incidental accounting services, if this court should conclude that the trustee is obligated to comply with the provisions of the State Health Code.

We submit that the expenses involved present a drain of the assets of this estate and are counter-productive to the overall scheme of bankruptcy administration. There is no pecuniary benefit to be received by the bankrupt estate by preserving and maintaining patient records.

In any event, it is black letter law that a State cannot legislate to augment or modify a federal statutory scheme which the U.S. Constitution deems to be solely a federal matter.

Regardless of the obvious inability of the state regulation to modify the clear statutory scheme of the Bankruptcy Act, it is apparent that the regulation does not, on its face, or as interpreted by the Court below, apply to a bankruptcy trustee. The regulation in question applies to a "governing authority." Webster's Dictionary defines "governing" as "to direct or control, rule."

The New York Public Health Law, Sec. 206(a)(11) defines "governing body" as follows:

"'Governing body' means the group of the individuals ultimately responsible for a hospital's general policies with respect to staff membership and professional privileges and shall include, but not limited to,

a board of trustees, a board of directors, a board of governors, a board of managers, a medical board, a director of any other official of a hospital with comparable responsibilities."

A trustee in bankruptcy is nothing more than a fiduciary appointed by the Bankruptcy Court, charged with the examination into the acts, conduct and property of the bankrupt and the liquidation and ultimate distribution of the assets in such a way as to realize the greatest possible pecuniary benefit to creditors. A trustee in bankruptcy does not direct, control or rule or set policies with regard to the functions of a hospital.

It seems clear that the State Health Code Regulations apply only to the hospital administrator or trustee, just as if the hospital had ceased operations in a solvent condition and had not voluntarily, or otherwise, sought administration of its financial affairs pursuant to the Federal Bankruptcy Laws.

The practical questions involved herein are most convincing. If a further duty was imposed upon the trustee in bankruptcy by State Legislation, via regulations which burdened him with the responsibility and obligation to preserve and maintain worthless property, the bankrupt estate could, conceivably, become depleted to the point where distribution to creditors was no longer possible.

The State Department of Health argues that a bankrupt estate is "never without assets." This statement defies logic. What assurance is there that a bankrupt hospital will have sufficient assets to assume the burden of maintaining patient records for upwards of 24 years?

While it is true that a hospital generally, upon liquidation in bankruptcy, has assets in many cases, these assets are encumbered by mortgages, security interest, tax liens, etc. which, very conceivably can leave no equity for a trustee in bankruptcy to administer. The fact that the trustee in this case has been able to realize equity in the bankrupt's assets may be deemed as fortuitous and should not provide a basis for the STATE OF NEW YORK to impose an economic burden upon the trustee and the creditors for whom he acts.

While it is true that the costs of preserving the bankrupt's property is a well recognized expense of administration, we submit that there is nothing in the record before this court to demonstrate that the patient records can be deemed an asset of this bankrupt estate.

Judge Pratt, in his decision below, correctly evaluated the worth of these patient records, where he stated at page 5 of his opinion as follows:

"To a bankrupt estate, the records are not an asset; they are a burden. While they might be viewed as 'property' in the sense of the scrap value of the paper and the second hand value of the filing cabinets, neither parties have argued those insignificant conditions. The over-riding concern of all parties and with the Court is with the information content of those records and that information is not property which was acquired by the trustee. Clearly it has no commercial value and the Bankruptcy Judge properly excluded the records from the public auction."

What the STATE OF NEW YORK, in order to overcome the conflict between the STATE OF NEW YORK'S regulations and the policy of the Federal Bankruptcy Laws, argues that the STATE OF NEW YORK'S policy is compatible with the Federal Law, for this Court could rule that the costs of maintaining and preserving the patient records is an expense within the ambit of Sec. 62(a)(1) and 64 of the Bankruptcy Act (11 U.S.C. Sec. 102(a)(1); 104).

Sec. 62(a)(1) provides that the actual and necessary costs and expenses incurred by officers other than Referees, in the administration of expenses, be reported in detail under oath, examined and approved, or disapproved by the court. If approved, they should be paid out of the estates in which they occurred. Sec. 64(a)(1) provides that the debts to have priority shall be the costs and expenses of administration, including the actual and necessary costs and expenses of preserving the estate

subsequent to the filing of the petition.

We submit that the costs and expenses involved herein are neither actual nor necessary. The patient records are not needed by the trustee for the administration of this type of estate. There is no pecuniary benefit to be gained by them. To the contrary, they present an acute economic burden to the estate.

Perhaps just as significantly the obligations sought to be imposed by the STATE OF NEW YORK, conflicts with one of the main goals of bankruptcy administration, i.e., the speedy administration of cases.

The delay which would necessarily follow if this obligation were to be imposed, would cause this estate to remain open for upwards of 24 years. We submit that there is no justification for this.

While the trustee opposes the burden sought to be placed upon him by the STATE OF NEW YORK, he is not indifferent to the needs of interested parties for these records. Unfortunately, the public policy of the STATE OF NEW YORK must, of necessity, be vindicated in some other forum and by some one other

than the trustee herein. Both the trustee and the Bankruptcy Court have requested that the STATE DEPARTMENT OF HEALTH assume jurisdiction over these records and in that way fulfill the STATE OF NEW YORK'S policy. This the STATE OF NEW YORK has refused to do.

CONCLUSION

The order appealed from must be affirmed in all respects together with the costs of this appeal.

Respectfully yours,

FINKEL & GOLDSTEIN
Attorneys for the Trustee-
Appellee

Dated: March 6, 1978
New York, New York

HAROLD S. BERZOW, OF COUNSEL

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss..

MICHAEL ANGEL NIEVES, being duly sworn,
deposes and says that deponent is not a party to the action,
is over 18 years of age and resides at
610 WEST 139 NYC.

That on the 13 day of MARCH, 1978,
deponent personally served the within BRIEF FOR APPELLEE,
LAURENCE SARF, TRUSTEE IN BANKRUPTCY OF ADELPHI HOSPITAL CORP
upon the attorneys designated below who represent the
indicated parties in this action and at the addresses below
stated which are those that have been designated by said
attorneys for that purpose.

By leaving 2 true copies of same with a duly
authorized person at their designated office.

~~By depositing 2 true copies of same enclosed
in a postpaid properly addressed wrapper, in the post office
or official depository under the exclusive care and custody
of the United States post office department within the State
of New York.~~

Names of attorneys served, together with the names
of the clients represented and the attorneys' designated
addresses.

LOUIS J. LEFIKOWITZ
ATTORNEY GENERAL - STATE OF NEW YORK
ATTORNEY FOR APPELLANT
2 WORLD TRADE CENTER - RM 4566
NEW YORK, N.Y.

Sworn to before me this

13 day of March, 19

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Michael Angel Nieves
Michael DeSantis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0530908
Qualified in Queens County
Commission Expires March 30, 1979